

STATE OF SOUTH DAKOTA

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

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IN THE MATTER OF THE COMPLAINT FILED
BY MONTANA-DAKOTA UTILITY CO. AGAINST
WESLEY JOHNSON REGARDING FAILURE TO
PROVIDE NOTIFICATION OF PROPOSED
EXCAVATION AS REQUIRED BY SDCL 49-7A-5
AND A FAILURE TO PROPERLY EXPOSE A
MARKED UNDERGROUND UTILITY LINE AS
REQUIRED BY SDCL 49-7A-8

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OC04-003

Transcript of Tape-recorded Proceedings
Held Telephonically
October 4, 2004

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD,
Rolayne Ailts Wiest, Attorney
Steve Lehner, Member
Todd Chambers, Member
Gene Solseth, Member
Pat Gilligan, Member
Paul Lowe, Member
Doug Larson, Member
Jerry Schroeder, Member
Ed Anderson, Member
Rod Cundy, Member
Larry Englerth, Executive Director

ORIGINAL

A P P E A R A N C E S

THOMAS M. FRITZ,
LYNN, JACKSON, SHULTZ & LEBRUN,
Attorneys at Law, P.O. Box 8250,
Rapid City, South Dakota 57709-8250,
appearing on behalf Montana-Dakota
Utility Company;

Reported By Cheri McComsey Wittler, RPR, CRR

PRECISION REPORTING
L I M I T E D

TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the offices of the
South Dakota Public Utilities Commission,
500 East Capitol Avenue, Pierre, South Dakota, on the
4th day of October 2004.

1 MR. SCHROEDER: This is
2 Jerry Schroeder. I'll call the meeting to order.
3 Larry, would you take roll call.

4 MR. ENGLERTH: Todd Chambers.

5 MR. CHAMBERS: Here.

6 MR. ENGLERTH: Terry Larson.

7 Rod Cundy.

8 MR. CUNDY: Here.

9 MR. ENGLERTH: Paul Lowe.

10 MR. LOWE: Here.

11 MR. ENGLERTH: Pat Gilligan.

12 MR. GILLIGAN: Here.

13 MR. ENGLERTH: Kevin Kouba.

14 Jerry Schroeder.

15 MR. SCHROEDER: Here.

16 MR. ENGLERTH: Gene Solseth.

17 MR. SOLSETH: Here by telephone.

18 MR. ENGLERTH: Steve Lehner.

19 MR. LEHNER: Here.

20 MR. ENGLERTH: This is Larry

21 Englerth. Rolayne Wiest.

22 MS. AILTS WIEST: Here.

23 MR. ENGLERTH: Ed Anderson.

24 MR. ANDERSON: Here.

25 MR. ENGLERTH: And any other parties

1 that would like to identify themselves?

2 MR. LARSON: Doug Larson as well.

3 MR. ENGLERTH: Sorry, Doug. I
4 missed you. And I believe Jim Mann is on.

5 MR. MANN: Yes. Jim Mann from
6 Montana-Dakota Utilities and Tom Fritz, counsel for
7 Montana-Dakota Utilities. We're on the line.
8 We're in Rapid City, South Dakota.

9 MR. ENGLERTH: Is there any
10 representative from Wesley Johnson or CreateAScape
11 Landscaping on the line?

12 (No audible response)

13 MR. SCHROEDER: Okay. It sounds
14 like we've got everybody. This is Jerry Schroeder.
15 I'll just sum this up a little bit here. The
16 purpose of this teleconference meeting is to
17 finalize a decision on the hearing for
18 Docket OC04-003 involving Wesley Johnson doing
19 business as CreateAScape Landscaping of Rapid City,
20 South Dakota.

21 At this time I will ask for a Motion for
22 probable cause.

23 MR. GILLIGAN: Mr. Chairman,
24 Pat Gilligan.

25 MR. SCHROEDER: Go ahead, Pat.

1 MR. GILLIGAN: Motion that we -- the
2 South Dakota Notification Board find Wesley Johnson
3 doing business as CreateAScape Landscaping did
4 violate SDCL 49-7A-5 by failing to provide
5 notification required and violated SDCL 49-7A-8 by
6 failing to maintain a minimum horizontal clearance
7 of 18 inches by any marked facility and the cutting
8 edge of his mechanical equipment.

9 MR. SCHROEDER: All right. I have a
10 Motion. Do I have a second?

11 MR. CHAMBERS: Todd Chambers. I'll
12 second.

13 MR. SCHROEDER: Okay. Todd will
14 second this Motion.

15 MS. AILTS WIEST: Excuse me. This
16 is Rolayne Wiest. And when you began you said it
17 was a finding of probable cause. At this time it
18 would be a final decision, just to clarify that.

19 Go ahead.

20 MR. SCHROEDER: All right. Any
21 other discussion on this Motion?

22 Hearing none, at this point I'll ask for all
23 in favor, indicate by saying aye.

24 (Various ayes)

25 MS. AILTS WIEST: I'm afraid

1 everyone's going to have to -- you're going to have
2 to do a roll call and do it.

3 MR. SCHROEDER: All right. At this
4 time could we do a roll call? Larry, would you
5 want to call out the --

6 MR. ENGLERTH: Jerry Schroeder.

7 MR. SCHROEDER: Aye.

8 MR. ENGLERTH: Todd Chambers.

9 MR. CHAMBERS: Aye.

10 MR. ENGLERTH: Steve Lehner.

11 MR. LEHNER: Aye.

12 MR. ENGLERTH: Ed Anderson.

13 MR. ANDERSON: Aye.

14 MR. ENGLERTH: Pat Gilligan.

15 MR. GILLIGAN: Aye.

16 MR. ENGLERTH: Doug Larson.

17 MR. LARSON: Aye.

18 MR. ENGLERTH: Ron Cundy? If Rod's
19 on, I believe he's abstaining. Is that correct,
20 Rod?

21 MR. CUNDY: That's correct. Yeah.
22 I'm just here to participate and to listen.

23 MR. ENGLERTH: Gene Solseth.

24 MR. SOLSETH: Aye.

25 MR. ENGLERTH: Paul Lowe.

1 MR. LOWE: Aye.

2 MR. ENGLERTH: Mr. Chairman, all
3 members present voted aye.

4 MR. SCHROEDER: Okay. Everyone, all
5 the members voted aye so there's no opposition to
6 this so Motion carried.

7 The second Motion that we'll entertain is
8 penalties. At this time I'll ask for a Motion
9 regarding the penalty phase.

10 MR. GILLIGAN: Mr. Chairman, this is
11 Pat Gilligan again.

12 MR. SCHROEDER: Go ahead, Pat.

13 MR. GILLIGAN: I'll make the Motion
14 the One Call Board establish a penalty for the
15 violation of SDCL 49-7A-5 by Wesley Johnson who's
16 doing business as CreateAScape Landscaping in the
17 amount of \$500 with the suspension of \$150 on the
18 condition that Wesley Johnson doing business as
19 CreateAScape fully comply with SDCL 49-7A and
20 ARSD Article 20:25 for 12 months from this date.
21 Also establish a penalty for the violation of
22 SDCL 49-7A-8 by Wesley Johnson doing business as
23 CreateAScape Landscaping in the amount of \$1,000
24 with \$250 suspended and on the condition that
25 Wesley Johnson doing business as CreateAScape fully

1 comply with SDCL 7A and ARSD Article 20:25 for
2 12 months from this date.

3 MR. SCHROEDER: Do I have a second
4 to this Motion?

5 MR. LEHNER: This is Steve Lehner.
6 I'll second.

7 MR. SCHROEDER: All right. I have a
8 second. Is there any discussion?

9 Hearing no discussion, Larry, would you again
10 take vote by roll call.

11 MR. ENGLERTH: Jerry Schroeder.

12 MR. SCHROEDER: Aye.

13 MR. ENGLERTH: Todd Chambers.

14 MR. CHAMBERS: Aye.

15 MR. ENGLERTH: Steve Lehner.

16 MR. LEHNER: Aye.

17 MR. ENGLERTH: Ed Anderson.

18 MR. ANDERSON: No.

19 MR. ENGLERTH: Pat Gilligan.

20 MR. GILLIGAN: Aye.

21 MR. ENGLERTH: Doug Larson.

22 MR. LARSON: Aye.

23 MR. ENGLERTH: Rod Cundy.

24 Abstaining. Gene Solseth.

25 MR. SOLSETH: No.

1 MR. ENGLERTH: Paul Lowe.

2 MR. LOWE: No.

3 MR. ENGLERTH: Mr. Chairman, you
4 have five in the affirmative and three in the
5 negative. Motion passed.

6 MR. SCHROEDER: Okay. Motion
7 passed. There is no further business. At this
8 point, I'd ask for a Motion to adjourn the meeting.

9 MR. LOWE: This is Paul Lowe. I
10 make the Motion to adjourn.

11 MR. SCHROEDER: Second.

12 MR. LARSON: Doug Larson. I'll make
13 the second.

14 MR. SCHROEDER: Okay. All in favor
15 say aye.

16 (All indicate aye)

17 MR. SCHROEDER: Meeting adjourned.
18 Thank you.

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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF HUGHES)

4
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter and Notary Public in and for the
7 State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I transcribed the cassette tape of
10 the foregoing proceedings.

11 Dated at Pierre, South Dakota this 29th day
12 of October 2004.

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17 Cheri McComsey Wittler,
18 Notary Public and
19 Registered Professional Reporter
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